

Order

Michigan Supreme Court
Lansing, Michigan

April 20, 2018

Stephen J. Markman,
Chief Justice

156776

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 156776
COA: 330759
Wayne CC: 12-003749-FH

THABO MANGEDWA JONES,
Defendant-Appellee.

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On order of the Court, the application for leave to appeal the October 31, 2017 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE that part of the Court of Appeals judgment holding that the exclusion of the victim's blood alcohol content was not harmless error, and we REMAND this case to that court for reconsideration of the issue. While the Court of Appeals identified potential consequences for defendant's trial strategy as a result of the exclusion of the disputed evidence, it erroneously equated such consequences with an assessment of whether it is "more probable than not that a different outcome would have resulted" had the evidence been admitted. *People v Lukity*, 460 Mich 484, 495 (1999). See MCL 769.26. While defendant's defense strategy is one pertinent consideration, on remand the Court of Appeals must consider it alongside the weight and strength of the untainted evidence and the proofs as a whole. *People v Lyles*, 501 Mich 107, 118 (2017).

We do not retain jurisdiction.



s0417

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 20, 2018

Clerk